

## **Practice of the Judicial Defense of the Right of Access to Information**

### **Introduction**

#### **The right of access to information and the necessity of the judicial defense**

Every person has the right to seek and receive information. The right of access to information is defined both in the RA Constitution and the RA "Law on Freedom of Information", as well as in the international legal acts ratified by the Republic of Armenia. The right of access to information is one of the basic human rights. It ensures the realization of other human rights, thus, the violation of this right may result in the violation of the others. The right to seek and receive information ensures transparency and publicity of the state bodies and local authorities. Finally, without a thorough knowledge of human rights, it will be impossible to exercise and protect them. Thus, the right of access to information is a precondition for the realization of all the other human rights, and an appropriate judicial control over this right is needed.

The RA "Law on Freedom of Information" was adopted on the 15th of November, 2003. As one of the best laws on freedom of information, this law establishes the right of individuals and organizations to seek information and to receive appropriate responses in certain deadlines. The right of access to information is defined in the chapter "Basic human and civil rights and freedoms" of the RA Constitution together with the rights to life, to dignity, to equality before the law, to judicial protection, etc.

### **Judicial practice of freedom of information**

#### **General overview of the court precedents in the field of freedom of information**

In order to provide a complete and coherent picture of judicial practice in the field of freedom of information, all court cases on freedom of information, included the former ones, should be discussed. But these data will be provided separately, taking into consideration the peculiarities of the previous and current judicial practices.

It will give an opportunity to have an idea of the general judicial practice at the same time providing an opportunity to compare the former and current judicial practices, showing their similarities and

differences. We distinguish 3 phases of judicial practice of the freedom of information:

1. Court cases that were filed in 2001-2003, before the adoption of the "Law on Freedom of Information"
2. Court cases that were filed in 2003-2006, after the adoption of the "Law on Freedom of Information"
3. Court cases filed in 2007-2009.

The separation of court cases that occurred after the adoption of the "Law on Freedom of Information" is necessary because their content has changed: the main goal of the court cases that took place during 2001-2003 was to judicially obtain information from officials. In 2007-2009 a requirement to impose administrative sanctions against the officials violating the right of access to information was added to the abovementioned requirement.

The process of the judicial defense and restoration of the right to know began in 2001, i.e. before the RA "Law on Freedom of Information" was adopted. In 2001-2003 six court cases on the freedom of information were held. In two cases the court partially satisfied the claims. However, the other four cases failed.

One of the partially satisfied cases was initiated by "Aquilles" Armenian Association to Defend Drivers' Rights, claiming that the RA Ministry of Internal Affairs be obliged to give information. This was in 2001 – two years before the RA "Law on Freedom of Information" was adopted. On the 14th of March, 2001 "Aquilles" NGO referred to the RA Ministry of Internal Affairs, asking them for some statistical data on the number of drivers who were penalized for violating traffic rules, on the amount of the penalty and about the number of the State Traffic Inspectorate employees who did not do their duties or abused their power. The Deputy Minister of Internal Affairs Mr. Ararat Mahtesyan refused to give information with a written note saying, "The Ministry of Internal Affairs does not find it expedient to make those statistical data available for you." On the 12th of September, 2001 a court claim was filed in the court of first instance of the Centre and Nork-Narash communities against the Ministry of Internal Affairs. On the 10th of October, 2001 the court partially satisfied the claim of "Aquilles" NGO against the Ministry of Internal Affairs deciding that the case regarding the demand for information should be quashed because it is to be given by another state body. However, the court satisfied the second part of the claim by obliging the defendant to provide a reasoned and comprehensive answer to the request of "Aquilles" NGO.

After the adoption of the RA "Law on Freedom of Information", from 2003 to 2006 by the initiative of different NGOs 11 court cases took place about the freedom of information, 10 of which had positive outcomes and one was partially satisfied. So, in general the forensic practice in 2001-2006 on the freedom of information has the following picture: 17 proceedings were taken, 10 of which were satisfied, 4 failed, and 3 were partially satisfied. It is worth mentioning that the FOICA initiated 7 cases out of 17. Those cases are:

- FOICA vs. the regional administration of Ararat region,
- FOICA vs. the city municipality of Aparan,
- FOICA vs. the city municipality of Gyumry,
- FOICA vs. the city municipality of Armavir,
- FOICA vs. the village municipality of Lukashin, in the region of Armavir,
- FOICA vs. the village municipality of Nurnus, in the region of Kotayk,
- FOICA and citizen Martiros Karapetyan vs. “Berlin Mother’s and Child’s Centre Polyclinic” CJSC and the Ministry of Healthcare”.

All the seven abovementioned cases were satisfied. Moreover, in three cases the defendant gave the demanded information before the trial would begin, in order to avoid court proceedings.

### **The Court Practice of the Freedom of Information: Present Statistics of Court Precedents in this field (2007-2009)**

As was mentioned, in 2003-2006 the FOICA initiated 7 court cases in the sphere of Freedom of Information. In 2007-2009 this record was tripled. In this period the FOICA took 20 court proceedings in order to restore the violated right of access to information and to penalize the officials who violate this right.

The overall statistics of the FOI court cases filed in 2007-2009 has the following picture: from the 20 proceedings only 16 were finished out of which 6 cases were fully satisfied, 5 were partially satisfied, 4 were dismissed and one was quashed without being proceeded in essence. In 2 cases of partially satisfied the court itself has decided to uphold the claim of the FOICA partially. And the rest 3 cases were quashed since during the court hearing the defendant provided the FOICA all the requested information. In these 3 quashed cases, too, the FOICA had demanded that the officials be penalized but after the information was voluntarily provided, the FOICA renounced this claim.

Out of 16 satisfied cases that were initiated by the FOICA in 2007-2009 six were against village municipalities, three were against community administrations, two were against State Non-Commercial Organizations, two were against political parties, one was against a city municipality, and one was against a court decision (see in the section “Bodies that have Violated the Freedom of Information”). In one of the cases the RA National Assembly was the defendant, for the case was about the constitutionality of the articles 151 and 152 of the RA Administrative Procedure Code. Thus, it should be noted that out of 16 cases that were initiated by the FOICA and were finished 11 have had positive outcome, and 5 cases have failed.

## **Satisfied Cases**

As it was already mentioned out of 11 cases that had had positive outcomes six were fully satisfied. Those cases are:

- FOICA vs. the Arabkir Community Administration,
- FOICA vs. the Davtashen Community Administration,
- FOICA vs. the village municipality of Bjni,
- FOICA vs. the village municipality of Elpin,
- FOICA vs. the decision of the RA Administrative Court's judge,
- FOICA vs. "National Technical Safety Center" SNCO.

One of the most important and core court cases initiated by the FOICA is "FOICA vs. the mayor and the village municipality of Elpin". In this case the court for the first time penalized the official for violating the freedom of information. On the 6th of July, 2009 the RA Administrative Court, with the presidency of Judge Mr. Arthur Poghosyan, made a decision to penalize an official for violating the right to know. This was the first precedent in Armenia when an administrative sanction was imposed against an official for violating the freedom of information.

It is also worth mentioning that in one of the satisfied cases the FOICA had appealed the illogical decision of the Administrative Court Judge. On April 9, 2008, the FOICA lodged a claim at the RA Administrative Court (seated in Etchmiadzin) against the village municipality of Zartonk, demanding the court to oblige the mayor's office to provide the requested information and impose administrative sanctions against the mayor Paruyr Sargsyan. The RA Administrative Court partially satisfied the claim and refusing to uphold the part where the claimant asked to impose an administrative sanction of AMD 50,000 against the mayor, arguing that, according to the article 254 of the RA Administrative Procedure Code, the FOICA has no right of lodging such claims. In other words, according to the court, a organization NGO has no right to bring charges to the Administrative Court, asking the latter to impose administrative sanctions against someone. Thus, the FOICA appealed the Administrative Court's decision.

The RA Administrative Court satisfied the FOICA's appeal and overturned the RA Administrative Court's decision dated 10.04.2009 in the administrative case VD4/0074/05/09 on the admissibility of the part of the claim for penalizing on the mayor of Zartonk with AMD 50,000.

The court case "FOICA vs. the "National Technical Safety Center" State Non-Commercial Organization" was also interesting. On January 29, 2010 the court decision over the case "FOICA vs. "National Technical Safety Center" SNCO" was issued at the Court of the General Jurisdiction of Center and Nork-Marash administrative districts. The Court fully satisfied the FOICA's claim compelling "National Technical Safety Center" SNCO provide the requested information within 5 days.

During this case the FOICA tried to get answers to the above mentioned questions by directing them to the Ministry of Emergency Situations. The Ministry refused to give the information saying that the request contain personal data, thus the request is subject to denial. This means that the Ministry of Emergency Situations was unaware that according to the 2nd part of the article 8 of the RA "Law on Freedom of Information", if a part of the requested information contains data that cannot be released, then the rest of the information is to be made available. Thus, the Ministry of Emergency Situations should have made the lists of the SNCO staff positions without stating the amount of salaries (e.g. by covering the parts which include information on the staff salaries). As a result of the court case "FOICA vs. Arabkir Community Administration" the FOICA not only restored its right of access to information, but also made the Community Administration accomplish one of its duties, abolishing its idleness. On the 30th of July 2008 the FOICA sent an information request to Arabkir Community Administration for the following information:

1. How many apartments (how many apartments are registered in the balance of the Community?) belong to Arabkir Community Administration by the ownership right, where live people who have not yet privatized these apartments?
2. You are kindly requested to inform the addresses of these apartments.
3. How many lawsuits have been initiated by Arabkir Community Administration with the claim to evict the residents from the abovementioned apartments belonging to the Community with the right of ownership?
4. Give us, please, information about the outcomes of those court cases (how many of them were satisfied, and how many - dismissed?).

Surprisingly, the response letter No. 25/01-4-1134 of Arabkir Community Administration as of 06.08.2008 was received by the FOICA on 23.08.2008. The indicated fact is affirmed by the copy of the envelope, which has a postal seal dated 22.08.08, after which it was received by "Freedom of Information Center of Armenia" NGO. FOICA considers the decline in providing information with such content ungrounded, believing that it violates the constitutional human rights, since it is not the responsibility of condominiums to provide such information on communal property.

Taking the aforementioned as a basis, the FOICA lodged a claim to the RA Administrative Court to recognize the acts of the self-government authority illegitimate and as a consequence to oblige the latter to provide the required information. Interlocutory proceedings took place on the 1st of December 2008. During the legal proceedings the FOICA representative Karen Mezhlumyan presented the subject-matter and grounds for the claim, as well as referred to the appropriate legislation. Arabkir Community Council Representative Gegham Karapetyan presented their objections in regard to the FOICA's claim. G. Karapetyan contended that they had not declined the FOICA's inquiry for information, adding: "Perhaps, we misunderstood each other in our correspondence, as a result of which we failed responding."

At the court session dated 30th of December, 2009 the RA Administrative Court fully satisfied the FOICA's claim vs. Arabkir Community Administration, finding its activities illegitimate. The Court obliged the Community Administration to provide the information within 5 days and compensate AMD 4000 paid as state duty.

Out of 11 cases that had positive outcome 5 were partially satisfied. In two cases out of these five cases the court found that the FOICA's demand to impose administrative sanctions against the official was not reasonable. However, in these two cases, too, the FOICA's main demands were satisfied – the claimed information was made fully available. These cases are “the FOICA vs. the mayor's office of the city of Hrazdan” and “the FOICA vs. the Nor Nork Community Administration”.

In the rest three cases that were partially satisfied the FOICA received the information before the trial was over, hence, it renounced its claim. These cases are

- FOICA vs. the mayor's office of the village of Zartok,
- FOICA vs. the mayor's office of the village of Talvorik,
- FOICA vs. the mayor's office of the village of Lenughi.

### **Dismissed Cases**

Five cases were dismissed. These cases are:

- FOICA vs. “Orinats Erkir” political party,
- FOICA vs. the “Armenian National Congress” Union,
- FOICA vs. the mayor's office of the village of Parakar,
- FOICA vs. the "Yerevan Urban Development and Investment Programs Department" SNCO,
- FOICA's claim to the RA Constitutional Court.

In the case of “FOICA vs. the “Armenian National Congress” Union” the court had to quash the case because of the legislative gap. In the other three cases the court has found that the claims of the Freedom of Information Centre of Armenia were not reasonable.

One of the negative tendencies is that courts refuse to impose administrative sanctions against those officials who violate the freedom of information, arguing that the right to hear cases about imposing administrative sanctions belongs to the RA Administrative Court. Whereas, RA Administrative Court refuses to penalize the official arguing that, according to the RA Administrative Procedure Code, the FOICA has no right to claim that administrative sanctions be imposed against an official. Secondly, there is no competent body to make statements about these violations. Whereas, the FOICA has no competence for making such statements. And in the RA Administrative Procedure Code there is no statutory provision that would define the presence of bodies with such a competence. So, it appears that the demand exists but there is no competent body to satisfy the demand. Thus, there is a

legislative gap here. As a result, the forensic defense of the right of access to information is dramatically hardened. In fact, out of 16 cases that the FOICA has taken and finished, in 11 cases although the FOICA had claimed that the official be penalized, only in one case – in the case against Elpin – this claim was satisfied.

Out of five cases that were dismissed, two were against political parties with the claim to ensure publicity. So, in April, 2009 the FOICA had asked the 8 parties that participated in the election of the councilors of Yerevan, to give the following information.

1. A copy of the financial report 2008 which should cover information defined by the part 3 of the article 28 of the RA “Law on Parties”
2. Information about those financial sources which made donations that valued more than the centuple of minimal salary defined by the law.

The answer of “Orinats Erkir” party was incomplete and over deadline. And the “Armenian National Congress” Union had not even answered the FOICA’s request. Thus the FOICA had taken proceedings against them. In the first case the Court of General Competence of Center and Nork-Marash administrative districts decided to dismiss FOICA’s claim against “Orinats Erkir” political party, arguing that if the FOICA found the information incomplete, then it could send a written request to the party. And if it did not give the correct information free of charge, only then the RA “Law on Freedom of Information” would have been violated. And in the case of “Armenian National Congress” Union the court decided to quash the case because, according to the RA Civil Jurisdiction Code, only physical or juridical persons can be defendants. Thus, because the “Armenian National Congress” is a union of political parties, and the Union is neither a physical, nor a juridical person, the “Armenian National Congress” Union cannot be a defendant in court. This means, that in spite of the fact that according to the RA Electoral Code, the Union is a body with certain rights and obligations, the court found the “Armenian National Congress” Union not an appropriate defendant.

In the court case of “FOICA vs. the mayor and the village municipality of Parakar”, too, the FOICA appealed the accuracy of the given information. On December 12, the FOICA sent a request for information to the mayor of Parakar, which included the questions/requests from villagers:

1. There is a 250-260 m<sup>2</sup> land plot near the road, on the left bank of the main brook that flows near the #1 building on the Mekenagortsneri street in the village of Parakar. Is this land included in the list of restrictions provided by the article 60 of the RA Land Code?
2. If yes, tell us, please, by what bases and reasons?
3. If no, then please, let us know.

The reply received from the mayor in January 2009 was incomplete. Therefore, the FOICA lodged a court case demanding a complete and full answer from the community leader. On the 30th of July the RA Administrative Court, presided by Judge A. Tsaturyan, heard the case of “FOICA vs. the mayor of Parakar and the village municipality”. In the court the mayor explained that he did not

provide a complete answer to the FOICA's inquiry, because it was practically impossible. He argued that the list of land plots that are not subject to privatization includes areas on which the Government has adopted special decisions. The mayor of Parakar must have the relevant Government decisions on the aforementioned plot in order to be able to provide the information requested by the FOICA.

On August 13, the RA Administrative Court decided to dismiss the FOICA's claim, considering the fact that the RA Government has not yet approved the relevant program that would include information about the land plot indicated by the FOICA.

The fourth court case that failed was "FOICA vs. "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization". On February 27, 2009, the FOICA sent an information request to the "Yerevan Urban Development and Investment Programs Department" SNCO asking for the following information:

1. How much money was allocated to the "Yerevan Urban Development and Investment Programs Department" SNCO from the 2006-2008 State Budget?
2. With which organizations did the "Yerevan Urban Development and Investment Programs Department" SNCO sign commission and description contracts in 2006, 2007 and 2008?
3. How much profit did the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization get from those commission and description contracts in 2006, 2007 and 2008?

The SNCO answered that information included in the first question was published in the "State Budget" of the respective years, while the next two questions contained commercial secrets and were not subject to release. In March, 2009, the FOICA appealed the SNCO's answer to the RA Administrative Court. On July 15, 2009, the Administrative Court decided to postpone the hearing of the court case for an indefinite period, because the defendant was being liquidating. However, the court sessions were resumed in November, 2009. During the November 20th session at the RA Administrative Court (Judge Mr. Argishti Ghazaryan) this trial of the case was completed and the court's decision was published on December 7, 2009, at 14:50 o'clock.

The fifth court case that failed was the FOICA's claim to the RA Constitutional Court (see in the section "A Claim to the RA Constitutional Court").

## **Appeals**

In four cases the FOICA has appealed the court decision. These cases are:

- FOICA vs. the village municipality of Parakar,
- FOICA vs. the village municipality of Zartonk,
- FOICA vs. the Nor Nork Community Administration,
- FOICA vs. the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization and the director of the SNCO.

In one case the FOICA had to appeal the court decision regarding its claim for providing information. This is the court case of “FOICA vs. the village municipality of Parakar” (see in the section “Dismissed Cases”). This decision of the RA Administrative Court was appealed in the Court of Appeal. The RA Court of Appeal has taken the case as a proceeding which will be heard in 2010.

In the frames of the court case of “FOICA vs. the village municipality of Zartonk” the FOICA had to appeal different acts or decisions of the court in different instances. So, in the court case of “the FOICA vs. the village municipality of Zartonk” the RA Administrative Court decided to refuse hearing the FOICA’s claim to impose administrative sanctions against the mayor of Zartonk. The FOICA had to appeal this decision in a higher court. The Administrative Court satisfied this appeal deciding that this claim of the FOICA could be accepted as a proceeding. Because the mayor of Zartonk gave the necessary information during the trial, the FOICA denounced all the claims, except the claim to recognize the mayor’s acts as illegal. The RA Administrative Court denied this claim as well, arguing that because the RA Administrative Procedure Code does not include this kind of claims, this part of the trial is subject to being quashed. The FOICA again had to appeal the Administrative Court’s decision – this time in the Court of Appeal. The Court of Appeal has not yet heard the case.

In two court cases (“FOICA vs. the "Yerevan Urban Development and Investment Programs Department" and the director of the SNCO”, and “FOICA vs. the Nor Nork Community Administration and the district community leader”) the FOICA after all had to take the case to the RA Constitutional Court, asking them to solve the issue regarding the possible order of penalizing an official.

## **A Claim to the RA Constitutional Court**

As was already mentioned, in two cases the FOICA had to take the case to the RA Constitutional Court.

So, in the court case of “FOICA vs. the "Yerevan Urban Development and Investment Programs Department" SNCO” the Administrative Court decided to refuse accepting the claim to penalize the director of the SNCO Robert Harutyunyan. First, the FOICA appealed the decision to the president of the Administrative Court. But the appeal was denied. Then the FOICA appealed in the Court of Appeal. It also came up with a petition to the Court of Appeal to apply to the RA Constitutional Court regarding the constitutionality of the article 151 of the RA Administrative Jurisdiction Code, particularly regarding its compliance to the articles 18 and 19 of the RA Constitution. The RA Court of Appeal decided to deny the appeal, as well as the petition to apply to the RA Constitutional Court.

In the court case of “FOICA vs. the Nor Nork Community Administration and the district community leader Davit Petrosyan”, too, the RA Administrative Court decided to uphold the claim partially, regarding the illegality of the idleness of the Nor Nork Community Administration. But the Court dismissed the claims to oblige the Nor Nork Community Administration to give the needed

information in five days and to penalize the community leader. The FOICA appealed this verdict in the RA Court of Appeal, but the latter decided to return the appeal, arguing that according to the articles 151 and 152 of the RA Administrative Procedure Code proceedings can be taken for inflicting administrative sanctions only based on the claims of the officials of such bodies that according to the law have the competence to write statements about administrative offenses. Whereas, the FOICA is not such a body or official.

So, exhausting the possibility of applying to all the instances for forensic defense, the Freedom of Information Center of Armenia turned to the RA Constitutional Court, since in both cases not the court's illegal decision or verdict was appealed, but the legal norms that hinder the implementation of the right of access to information – the constitutionality of the articles 151 and 152 of the RA Administrative Jurisdiction Code. By applying to the Constitutional Court the FOICA aimed at overcoming the legislative gap and overcoming the uncertainty of the judges of other courts in interpreting the laws.

On the 5th of February, 2010 the RA Constitutional Court heard the FOICA's claim to declare the articles 151 and 152 of the RA Administrative Procedure Code as contradicting the RA Constitution. Right on the same day the Constitutional Court announced its decision.

The RA Constitutional Court decided that the articles 151 and 152 of the RA Administrative Procedure Code do not contradict the constitution. The Constitutional Court stated that the problem lies in the legislative gap in this sphere. It is necessary that the competent body, i.e. the RA National Assembly, implement a proper initiative in order to carry out reforms in the RA Code of RA Administrative Offence and fill the legislative gap of the penalizing institute.

### **Unfinished Cases**

Out of 20 court cases initiated by the FOICA in 2007-2009 at the time of 1st of March, 2010 five are not yet over. These cases are:

- FOICA and "Aravot" daily vs. the regional administration of Lori,
- FOICA and "Aravot" daily vs. the regional administration of Shirak,
- FOICA vs. "#2 Medical Unit" CJSC,
- FOICA vs. the Armenian Labor Socialist Party,
- FOICA's appeals in the RA Constitutional Court

## **The FOICA's Inquiries for Information**

The analysis of the court cases that were initiated by the FOICA shows the kinds of information the hiding of which puts officials into trials. So,

FOICA vs. the "Armenian National Congress" Union, FOICA vs. "Orinats Erkir" political party, FOICA vs. the Armenian Labor Socialist Party":

1. A copy of the Union's (party's) 2009 financial report.
2. Information about those financial sources which made donations that valued more than the centuple of minimal salary defined by the law.

FOICA vs. the village municipality of Elpin, FOICA vs. the village municipality of Bjni, FOICA vs. the village municipality of Zartonk:

1. The 2008 community budget,
2. A copy of the 2008 community budget implementation report.

FOICA vs. the mayor's office of the village of Lenughi, FOICA vs. the mayor's office of the village of Talvorik:

1. A copy of the 2008 community budget,
2. Copies of the decisions made by the community councilors about allotting land in the 2nd semester of 2008.

FOICA vs. the Nor Nork Community Administration, FOICA vs. the Davtashen Community Administration, FOICA vs. the Arabkir Community Administration:

1. How many apartments (how many apartments are registered in the balance of the Community?) belong to Arabkir Community Administration by the ownership right, where live people who have not yet privatized these apartments?
2. You are kindly requested to inform the addresses of these apartments.
3. How many lawsuits have been initiated by Arabkir Community Administration with the claim to evict the residents from those apartments?
4. Give us, please, information about the outcomes of those court cases (how many of them were satisfied, and how many - dismissed?).

In the court cases FOICA and "Aravot" daily vs. the regional administration of Lori, FOICA and "Aravot" daily vs. the regional administration of Shirak the governors of Lori and Shirak were taken to court because they did not give the following information: "Since 2005 from the RA State Budget, besides the expenses for preserving the regional administration, the RA regional administrations have been receiving money, under the line "Other Subsidies from the Budget". In 2005, 2006, 2007 each regional administration received AMD 10 million, and in 2008 and 2009 each received AMD 20 million. Please, answer the following questions:

1. How was that money spent by the years?
2. Please, specify how many decisions were made each year and how much money was spent by each decision?

FOICA vs. the "National Technical Safety Center" State Non-Commercial Organization:

1. By the 1st of August of this year how many private companies conducting expert examining were registered in the SNCO's register and by whose name are those companies registered? State the names of the accredited companies.
2. Give us, please, the 2008 and 2009 staff lists of the SNCO and the amount of the salaries of the employees for the same time period.

FOICA vs. "#2 Medical Unit" CJSC:

1. The order of providing medicine to children under the age of 7 in the kids' polyclinic of the #2 Medical Unit.
2. A copy of the current list of free medicine.
3. Please, also inform us whether there is another way of receiving free medicine for children under the age of 7 if the child is sick and the medicine needed is not included in the abovementioned list.
4. Also, tell us please, what the parent should do if there is a medicine in the list which is needed for the sick child, but the doctor does not provide it.

FOICA vs. the village municipality of Parakar:

1. There is a 250-260m<sup>2</sup> land plot near the road, on the left bank of the main brook that flows near the #1 building on the Mekenagortsneri street in the village of Parakar. Is this land included in the list of restrictions provided by the article 60 of the RA Land Code?
2. If yes, tell us, please, by what bases and reasons.
3. If no, please let us know.

FOICA vs. the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization:

1. How much money was allocated to the "Yerevan Urban Development and Investment Programs Department" SNCO from the 2006-2008 State Budget?
2. With which organizations did the "Yerevan Urban Development and Investment Programs Department" SNCO sign commission and description contracts in 2006, 2007 and 2008?
3. How much profit did the "Yerevan Urban Development and Investment Programs Department" State Non-Commercial Organization get from these commission and description contracts in 2006, 2007 and 2008?

FOICA vs. the city municipality of Hrazdan:

The reasons of the decisions adopted by the city mayor's office and councilors of Hrazdan during the second quarter of 2007.

This statistics is based on the 18 court cases initiated by the FOICA. Two court cases are not included because they do not refer to getting information from an official. These cases are “the FOICA vs. the Administrative Court decision” and the FOICA’s appeal to the RA Constitutional Court (see the sections “Cases that were Satisfied” and “A Claim to the RA Constitutional Court”).

### **Bodies that have Violated the Freedom of Information**

The FOICA’s court cases of 2007-2009 showed which information possessing bodies have violated the freedom of information most often and appeared in courts.

So, according to the court cases, village municipalities have violated the freedom of information the most. In 6 court cases initiated by the FOICA village municipalities have been the defendants:

1. the village municipality of Elpin, Talvorik, Zartonk, Lenughi, Parakar and Bjni.
2. Second place belongs to political parties and Community Councils. For violating the freedom of information the FOICA has lodged court claims against three parties (“Armenian National Congress” Union, "Orinats Erkir" and Armenian Labor Socialist Party),
3. Community Councils (Nor Nork, Davtashen and Arabkir).

In 2007-2009 two regional governors (the governors of Lori and Shirak) and two State Non-Commercial Organizations (“Yerevan Urban Development and Investment Programs Department” State Non-Commercial Organization and “National Technical Safety Center” State Non-Commercial Organization) appeared in the court for violating the right of access to information. At the same time, only one city municipality (the city municipality of Hrazdan) and one organization of communal importance (“#2 Medical Unit” CJSC) have left the FOICA’s inquiry without an appropriate answer, thus, they, too, were taken to court.

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| • <b>Village municipalities</b>               | <b>6 court cases</b> |
| • <b>Political parties</b>                    | <b>3 court cases</b> |
| • <b>Community Councils</b>                   | <b>3 court cases</b> |
| • <b>Regional administrations</b>             | <b>2 court cases</b> |
| • <b>State Non-Commercial Organizations</b>   | <b>2 court cases</b> |
| • <b>City municipalities</b>                  | <b>1 court case</b>  |
| • <b>Organizations of communal importance</b> | <b>1 court case</b>  |

This statistics is also based on the 18 court cases initiated by the FOICA.

## **The Claims of the FOICA**

During the court cases initiated by the FOICA the Freedom of Information Center of Armenia has lodged specific groups of court claims. First of all the access to information is a common problem. Thus, the FOICA's first group of claim was to oblige officials to give information. Seeing the importance of legal recognition of the right of access to information, the FOICA has also insisted in its claims that the court recognize illegal those actions of idleness of the officials that result in the violation of the freedom of information.

Unlike the 7 cases initiate in the previous years this time the FOICA has compulsorily included the demand to impose administrative sanctions on the officials violating the freedom of information. This fact has dramatically affected the outcomes of the court cases on the freedom of information. Unlike the previous 7 cases, all of which have been satisfied, part of the court cases lodged in 2007-2009 were partially satisfied, and the exact demand to penalize the official has been dismissed.

As was already mentioned, the third group of court claims refers to the penalization of the officials violating the freedom of information. Unfortunately, the reality shows that the courts are not yet ready to penalize officials for violating the right of access to information – this demand is mostly rejected by the court (See in section "Dismissed Cases").

Finally, the fourth group of court claims refers to the expenses incurred by the FOICA for restoring the freedom of information in court, i.c. the demand for compensating the money paid as state fee. This is particularly important for the citizens. The problem is that some avoid forensic proceedings, thinking that it can be expensive and that even if the case is satisfied, it is not worth the extra expense. But it is essential that when the violated right is restored in court and when there is the corresponding claim, the expenses incurred by the claimant be compensated.

### The Problems of the Judicial Practice of the Freedom of Information

The court cases initiated by the Freedom of Information Center of Armenia gave an opportunity to carry on a number of analyses around the practice to apply justice in the sphere of the freedom of information and to reveal a number of issues that hinder the implementation of the right of access to information.

#### **1. The dependence of courts on the executive branch of government**

The analysis of the court cases initiated by the FOICA showed that courts avoid penalizing officials. One of the core reasons for this phenomenon may be the dependence of courts on the executive power. This dependence virtually hinders the courts when issuing objective and bold verdicts against officials.

#### **2. The none-execution of forensic charges**

In some cases the court verdict is not unconditionally executed in the given deadline. Out of 14

finished court cases initiated by the FOICA in two cases the FOICA had to turn to the Service of Forced Execution of the Forensic Charges in order to make the official carry out the charge.

### **3. The lack of trust towards courts**

In 2007-2009 the initiators of court cases in the sphere of the freedom of information are mainly the NGOs and not the citizens. Albeit the fact that several people turn to the Freedom of Information Center asking for help in accessing some information, the citizens avoid asking for forensic defense for the right of access to information. This comes to prove that people lack trust towards courts. They do not believe that the court will issue a fair and objective verdict and will protect their right of access to information from being abused by officials.

### **4. Lack of awareness**

Even 6 years after the adoption of the RA "Law on Freedom of Information" there still are officials, who are unaware of this law. There are cases when the FOICA has to explain the law on the deadlines, and bases and reasonable grounds for denying the request for information. The FOICA is compelled to let them know about these things before demanding an appropriate answer to its inquiries in an appropriate deadline, or a reasonably grounded denial.

An example of unawareness of the statutory provisions of the RA "Law on Freedom of Information" is when Ministry of Emergency Situations turned down the FOICA's inquiry for information.

### **5. Imperfect legislative field**

One of the problems present in the sphere of the freedom of information is the imperfect legislative field. The problem is that there are not enough legal acts regulating the sphere of the freedom of information and that some matters in this sphere are not regulated by legal acts. Also, some statutory provisions are missing or are present in other legal acts and hinder the implementation of the right of access to information, rising controversies.

It is already 6 years that the RA "Law on Freedom of Information" is valid. However, two sub-legal acts that are anticipated by this law and are necessary for assuring the freedom of information were never adopted. Today, by the initiative of the FOICA, member of the RA National Assembly Victor Dallakyan, together with the RA Ministry of Justice have developed a reform plan for the RA "Law on Freedom of Information". The FOICA has initiated the organization of some discussions, based of which some amendments were made in the draft. With these reforms we aim at freeing the RA Government from the responsibility of accepting the sub-legal acts that assure the execution of the right of access to information. Instead, the matters which were to be regulated by sub-legal acts will be included in the law itself. And this will end the dissenting opinions and the disgraceful practice of turning down the inquiries for information with the argument that there are no sub-legal acts.

## **6. The controversial interpretation of the legal acts by courts**

In some cases, because of imperfectness of some legal acts that have nothing to do with the sphere of the freedom of information, a legislative gap appears, as a result to which, strangely, suffers the right of access to information. So, the FOICA tried to forensically protect its right of accessing to information by lodging a court claim against the "Armenian National Congress" Union which had left the FOICA's request for certain information unanswered. During this case the following problem occurred: the "Armenian National Congress" is a union of political parties, and a union, according to the RA legislation, can neither be a physical nor a juridical person. And according to the RA Civil Procedure Code, only physical or juridical persons can be defendants in court. It turns out that the "Armenian National Congress" Union cannot be a defendant in court. Based on this the Court of General Competence of Center and Nork-Marash administrative districts decided to quash the FOICA's claim against the "Armenian National Congress" Union. Besides hindering the implementation of the freedom of information, this legislative gap also created a controversy between the RA Civil Procedure and the RA Electoral Codes, since the RA Electoral Codes anticipates an opportunity of forensically calling the Union to account. Whereas, the RA Civil Procedure Code excludes this opportunity.

In such circumstances the choice of the court becomes of a great importance, i.e. which legal act the court supports and follows. Facing contradictions between different legal acts which are of the same legal power the court should be able of correct orientation. It should be able to ensure maximum objectivity and be guided by the legal act the execution of which will restore the violated right. However, the forensic practice of the freedom of information depicts the opposite picture – mostly judges make use of the contradictions between the legal acts for quashing the court cases, avoiding their real solutions.

## Conclusion

Albeit the problems in the sphere of implementing the right of access to information the forensic practice of the defense of this right could not remain without positive outcomes. The progress is obvious: the first verdict to penalize an official for not giving information has already been issued. Also, the draft for legal reforms on the Freedom of Information is in the agenda of the RA National Assembly.

Every court case about the freedom of information is already of a great educational importance by itself. Regardless of the final outcome the court cases are broadly covered by the mass media. So, these cases draw the attention of the citizens and officials, growing the awareness about the right of access to information. Besides, these court cases promote to the prevention of violations of the freedom of information. They are a unique warning for the officials that if they hinder the freedom of information they will be made answerable in court. The satisfied cases are also of precedential importance. The judge, respecting his colleagues, takes their verdicts into account, issuing similar verdicts in similar cases.

The practice of court cases regarding the freedom of information, the existence of such cases and their often positive outcomes also brought certain progress in popularizing court cases. Although citizens do not refer directly to courts or advocating organizations, yet, in order to protect their right of access to information, two court cases have already been lodged where together with the FOICA a media outlet is also a co-claimant – the "Aravot" daily. The court cases regarding the freedom of information become means for protecting the right of access to information for mass media, as well.

The analysis of the court cases before 2007 regarding the freedom of information shows that even after 2007 the problems of forensic practice of the freedom of information have remained the same. However, their contents has changed: if previously the courts avoided insisting the obligation of the officials to provide information, today, stating the fact that the official has violated the freedom of information and that he is obliged to provide information, they avoid penalizing those officials. The analysis of the forensic practice of the freedom of information helped reveal a number of obstacles. These obstacles hinder the implementation of the right of access to information, the right to seek and receive information. Hence, they hinder the formation of a civil society with a high level of legal consciousness, too. The positive results do not occur spontaneously – it is necessary to overcome the current obstacles to ensure positive outcomes, thus, a more perfect legislative field in the sphere and an appropriate execution of the right. For this reason the active work of the citizens and the NGOs is necessary. One might mark out a number of basic courses of such activities:

### **A. Appeals to higher authorities**

The FOICA had sent a written reference to the regional administration of Ararat asking for some information but receiving none. However, after the FOICA appealed the idleness of the governor of the region of Ararat to the RA Minister of Territorial Administration Armen Gevorgyan, the FOICA was provided with a comprehensive answer. So, appeals to higher authorities can also have positive outcome. The appropriate control of the higher authorities can greatly decrease the law violations and unfair decisions by the inferiors. The courts are not exceptions either. In a number of cases the FOICA has appealed the decision of the Administrative Court to a higher authority – to the president of the Administrative Court. In one case (“FOICA vs. the "Yerevan Urban Development and Investment Programs Department" and the director of the SNCO) the appeal was dismissed. In another case (“FOICA vs. the village municipality of Zartonk”) the appeal was satisfied.

### **B. Claim to the Constitutional Court**

The human right of access to information, of seeking and receiving information is protected by the RA Constitution. However, some statutory provisions of some legal acts allow officials to violate the freedom of information and avoid responsibility. As a rule, in such cases the courts abstain from interpreting the right, preferring to dismiss the court claim. The FOICA has faced such problems during the cases of “FOICA vs. the "Yerevan Urban Development and Investment Programs Department" State None-Commercial Organization and the director of the SNCO”, and “FOICA vs. the Nor Nork Community Administration and the community leader”. In this case the role of the Constitutional Court is essential. It is the responsibility of the Constitutional Court to define the constitutionality of legal acts or distinct norms of the acts. Thus, it is possible to abolish the legislative gap by applying to the Constitutional Court. In some cases it also allows to overcome the indecisiveness of the judges of other courts.

### **C. Legislative Reforms**

Even if the judges show great will and support, it will be impossible to execute the right of access to information without a sufficient legislative base. There exist gaps and shortcomings in the legislative field on the freedom of information. These shortcomings are to be abolished. As it was already mentioned, by the initiative of the FOICA member of the RA National Assembly Victor Dallakyan, together with the RA Ministry of Justice have developed a reform plan for the RA law about "Freedom of Information", the adoption of which will be solve a number of important issues. E.g., electronic inquiries are suggested. Or, it is suggested to omit from the RA "Law on Freedom of Information" the RA Governments responsibility to accept the sub-legal acts that assure the execution of the right of access to information and to regulate these matters according to the RA "Law on Freedom of Information".

### **D. Training the judges**

For the sake of appropriate protection and execution of the right of access to information it is necessary to increase the knowledge and awareness about this sphere and the right. The FOICA

organizes trainings and discussions during which the statutory provisions and the logic of the RA "Law on Freedom of Information" are clarified. Also the significance and the importance of the freedom of information are clarified. It is necessary to organize trainings for judges and workers in the judicial system, as well.

### **E. Encouragement**

For the execution of the right of access to information it is of great importance that, on the one hand, the citizens are motivated to protect their rights, on the other hand, the officials are motivated to work publicly and transparently, and the judges are motivated to realize an appropriate protection of the freedom of information. From this point of view the different events on the freedom of information can play a significant role. Every year, on the international 'Right to Know Day' – on the 28th of September – the FOICA organizes an award-giving, during which awards ("Golden Keys") are given to the judge who has issued an important verdict for the protection of the freedom of information, to the official who works most publicly and transparently, to the most active citizen in the sphere of executing the freedom of information, etc. Whereas, the officials, who have violated the freedom of information or have been recognized as the most discreet ones, receive "Rusty Locks". Naturally, the "Golden Key" increases the public trust towards the official or the body. While the "Rusty Lock" is a big minus for the political reputation of the official.